

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Telecommunications )  
Act of 1996 )  
)  
Telecommunications Carriers' Use of )  
Customer Proprietary Network Information )  
and other Customer Information )  
)  
Implementation of the Non-Accounting )  
Safeguards of Sections 271 and 272 Of the )  
Communications Act of 1934, As Amended )

CC Docket No. 96-115

CC Docket No. 96-149

**OPPOSITION OF BELL ATLANTIC<sup>1</sup> TO MCI WORLDCOM PETITION FOR  
FURTHER RECONSIDERATION**

Much of MCI WorldCom's ("MCI's") petition is nothing more than a defective request for the Commission to reconsider issues it has twice addressed and twice denied. Such redundant requests are barred by the Commission's rules and should be dismissed. Even aside from its procedural flaws, moreover, MCI's request to have nearly unfettered access to customer information without prior consent would gut the privacy protections in the Act. Likewise, there is no justification for granting MCI's request to find that a carrier's failure to meet an artificial deadline set by another carrier for providing CPNI is a *per se* violation of the Act. As with any

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

other complaint, the Commission should consider the factual circumstances before rendering a decision on an alleged CPNI violation.

The Commission should, however, clarify the scope of what information needs to be given to a customer on an inbound call before obtaining verbal consent to review that customer's CPNI. It would serve no useful purpose to require a carrier to read to the customer a list of the dozens of affiliates that might have access to CPNI upon customer approval. A shorter, comprehensible notice should suffice.

### **ARGUMENT**

1. **MCI May Not Lawfully Seek Reconsideration of Issues That the Commission Has Previously Reconsidered.**

MCI's principal request is for the Commission to reconsider its finding that "prior consent is required before CPNI can be disclosed outside the existing relationship." MCI WorldCom Petition for Further Reconsideration at 4 ("Petition"). Instead, MCI wants *carte blanche* to review the CPNI of any customer to which MCI desires to market its own services. *Id.* at 3-10. But, as MCI admits (at 3, n.4), the Commission considered and rejected this very MCI request both in its initial order<sup>2</sup> and on reconsideration.<sup>3</sup> Under the Commission's rules, a party may not lawfully seek reconsideration for a second time of a matter that the Commission has already addressed and affirmed without change on reconsideration. 47 C.F.R. § 1.429(i).

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<sup>2</sup> *Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061, ¶ 23 (1998) ("CPNI Order").

<sup>3</sup> *Order on Reconsideration and Petitions for Forbearance*, FCC 99-223, ¶¶ 86-89 (rel. Sept. 3, 1999) ("Reconsideration Order").

Here, MCI is asking for a third bite at the same apple, and the Commission should summarily dismiss its request.

Similarly, the Commission has twice denied MCI's request to allow carriers to tell customers that their refusal to permit MCI to view CPNI may disrupt the installation of new services. Reconsideration Order at ¶ 91, citing CPNI Order at ¶ 138. MCI's attempt to seek further reconsideration of this issue is also procedurally defective. *See* Petition at 12-13.

Finally, MCI again claims that an incumbent's failure to provide CPNI access in a "timely manner" to a new entrant that has obtained customer consent is a *per se* violation of sections 201(b), 251(c)(3) and 251(c)(4) of the Act. But the Commission has twice found that a failure to disclose the customer's service record prior to commencement of service *might* "constitute an unreasonable practice in violation of section 201(b), *depending on the circumstances.*" Reconsideration Order at ¶ 86 (emphasis added), citing CPNI Order at ¶ 85. MCI's request is not only a redundant reconsideration request, and therefore barred, but it would, if adopted, inappropriately deprive a defendant carrier of any opportunity to justify its actions by denying the Commission the ability to examine the factual circumstances, including the validity of the complainant's claim that disclosure was not timely. The Commission has twice found that it should have the right to examine the circumstances of an alleged failure to provide timely CPNI access and there is no reason to reexamine that finding yet again. Just as with any other complaint, a CPNI complainant should have the burden of proving a violation.

2. The Act Does Not Permit Third Party Access To CPNI Without Prior Written Consent.

MCI's principal request is to gain access to the CPNI of a customer with which it has no prior business relationship during an inbound or outbound telemarketing call *without* the prior consent of the customer. Petition at 3-10. If the Commission reaches the merits of this request, which it should not, it should deny it as inconsistent with the letter and spirit of section 222 of the Act. Although couched in terms of enabling MCI to fill a service order or provide the customer with comparative pricing information, MCI's petition boils down to seeking an open-ended opportunity to view customers' CPNI based upon its unilateral decision to market its services to that customer. But section 222(c)(2) permits such disclosure to third parties only upon a customer's *prior written* consent. And the Commission has properly found on two previous occasions that until a customer actually subscribes to a carrier's service, there is no carrier-customer relationship that gives implied approval to disclose CPNI. CPNI Order at ¶ 23, Reconsideration Order at ¶ 89. Accordingly, no such relationship exists during a sales call.

More broadly, however, MCI's request would gut the privacy provisions of section 222. It would give a carrier unfettered access to the CPNI of any potential customer. All that would be required is for the carrier to make an internal decision to market its services to that customer. Congress provided no such exception to the strict disclosure restrictions in the Act, and one may not lawfully be granted for MCI's marketing convenience.

In fact, MCI's asserted inability to obtain information about the customer's account stems entirely from its own business decision not to seek a customer's consent using the Commission's prescribed processes for obtaining consent, which MCI terms the "long form" consent process. *See* Affidavit of Sherry Lichtenberg at ¶ 7 ("It is MCI WorldCom's business judgement that

such long form consent would have a significantly adverse ability on a prospective customer's willingness to complete his or her order"). And even that consent is not needed if MCI were simply to use an existing mechanism that allows it to migrate a customer "as is," without specifying all of the customer's services and features. Under that mechanism, in order to migrate a customer "as is," MCI need only enter clear identifying information, such as the customer's telephone number, and Bell Atlantic's systems will migrate the customer to MCI with the same network features as that customer had taken from Bell Atlantic. So, even though MCI claims that "two-thirds of customers want to keep their service exactly as it is," *id.* at ¶ 6, MCI steadfastly refuses to use the very process that allows that to happen. Instead, MCI has simply decided not to accept any "migrate as is" orders, *see id.* at ¶ 8, and has decided to migrate all new customers "as specified," which requires MCI to enter each of the services and features that a customer wants from the new carrier. But MCI's decision to reject a streamlined process in favor of a more cumbersome one and its refusal to seek customer consent to facilitate the processing of "as specified" orders are no reason for the Commission to reconsider its decision.<sup>4</sup>

3. MCI Should Not Be Permitted To Tell a Customer That Failure To Allow CPNI Access May Adversely Affect Service Provisioning.

MCI asserts that, without knowing what services and features a customer has subscribed to from the existing carrier, it will be constrained in its ability to provide the same features when a customer asks for an "as is" migration. Therefore, MCI wants the right to tell customers that failure to permit MCI to gain access to CPNI may disrupt installation. Petition at 12-13. The

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<sup>4</sup> MCI also claims that, even when Bell Atlantic provides CPNI, it hides certain unspecified fields on the service record that MCI needs to provision a service. Petition at 11. In fact, the only information that is masked is that which is unrelated to the provision of network services, such as the customer's social security number and credit rating, which are not CPNI.

“problem” that MCI outlines, however, is of its own creation. If a customer wants to migrate all of its existing services, MCI already has the ability to place the order quickly and efficiently without seeing the customer’s CPNI and without asking the customer to identify existing services and features. If the customer wants to specify the services and features he or she wants, MCI can find out quickly whether they are available from the customer’s serving wire center, because it has nearly instantaneous on-line access to pre-ordering information that provides the capabilities of the central office switch that serves the customer. Therefore, the Commission should deny MCI’s request, because it is simply not true that the failure of MCI to gain access to CPNI will delay or disrupt service provisioning.

4. PIC Freeze Information Is CPNI.

Finally, MCI takes issue with the Commission’s finding that PIC freeze information is CPNI. Petition at 16, citing Reconsideration Order at ¶ 148. MCI provides no new arguments that the Commission failed to consider earlier. As the Commission properly found, whether the customer has chosen to restrict other carriers from submitting changes to its choice of providers is information relating to the “type” of service that a customer has subscribed to, and, therefore, “falls squarely within the definition of CPNI” in section 222(f)(1)(A). Reconsideration Order at ¶ 148. The Commission should again reject MCI’s argument to the contrary.

5. Carriers Should Not be Required To List All Affiliates That Might Have Access To CPNI.

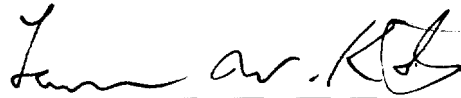
The Commission should adopt MCI’s request to clarify that carriers should not have to list the name of every entity that might obtain access to CPNI when obtaining verbal customer consent. Petition at 13-14. Such a requirement would serve no useful purpose. A diverse company like Bell Atlantic (and, presumably, MCI WorldCom) has dozens of separate affiliates

offering a variety of services, and the names of those affiliates change from time-to-time. Few customers want to sit through a lengthy litany of all of those names. Instead, the soliciting carrier should be able simply to ask if the customer authorizes release to "all affiliates" of the company on whose behalf the solicitation is made. If the customer asks for more detail, or a written list, that should be provided.

### CONCLUSION

Accordingly, the Commission should deny MCI's requests for reconsideration and clarify that a carrier need not read the names of all affiliates when soliciting disclosure of CPNI.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 1999, copies of the foregoing  
“Opposition to MCI WorldCom Petition for Further Reconsideration” were sent by first class  
mail, postage prepaid, to the parties on the attached list.

  
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Jennifer L. Hoh

\* Via hand delivery.



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